

## Message Text

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21

ORIGIN OPIC-06

INFO OCT-01 NEA-10 ISO-00 EB-07 /024 R

DRAFTED BY OPIC/ID/AA:MC MIDUCH

APPROVED BY EB/IFD/OIA:RJSMITH

OPIC/ID/AMKRAMISH

EB/IFD/OIA:DHSTEBBING

NEA/ARP:COCECIL (INFO)

----- 118051

P 190052Z OCT 76

FM SECSTATE WASHDC

TO AMEMBASSY JIDDA PRIORITY

INFO AMEMBASSY MANAMA PRIORITY

UNCLAS STATE 258167

FROM OPIC

E.O. 11652: N/A

TAGS: EINV

SUBJECT: EXEMPTION OF OPIC/SURETY PROPOSAL

ATTN: OPIC VP HILLIARD ZOLA, FINANCIAL TIMES CONFERENCE AT  
BAHRAIN HILTON

REF: JIDDA 6776

1. IN RESPONSE TO REFTEL FOLLOWING IS TEXT OF SHOCKEY  
LETTER OF OCTOBER 4, 1976:

THIS IS TO ACKNOWLEDGE YOUR LETTER DATED SEPTEMBER 29, 1976,  
TO MR. ROBERT BLOOM, ACTING COMPTROLLER OF THE CURRENCY.  
YOUR LETTER ACKNOWLEDGES RECEIPT OF A RULING DATED SEPTEMBER 24, 1976, COPY ENCLOSED, BY THE COMPTROLLER OF THE  
CURRENCY GRANTING, PURSUANT TO 12 C.F.R. 7.1160(C)(3), AN  
EXCEPTION TO THE LENDING LIMITS FOR CERTAIN TYPES OF STAND-  
BY LETTERS OF CREDIT ISSUED BY AMERICAN BANKS ON BEHALF OF  
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UNITED STATES CONSTRUCTION FIRMS DOING BUSINESS ABROAD.

YOUR LETTER SETS FORTH YOUR UNDERSTANDING OF CERTAIN DETAILS OF THE COMPTROLLER'S DESCRIPTION OF THE APPROVED ARRANGEMENTS. SPECIFICALLY, YOU ASK THAT WE CONFIRM THAT THE RULING WAS PREDICATED, INTER ALIA, ON OUR UNDERSTANDING OF THE FOLLOWING DETAILS:

A. OPIC'S INSURANCE WOULD COVER 90 PERCENT OF THE AMOUNT OF ANY DRAWING OF THE LETTER OF CREDIT THAT WAS NOT BASED ON THE CONTRACTOR'S NON-PERFORMANCE OF ITS OBLIGATIONS UNDER THE CONSTRUCTION CONTRACT, I.E., THAT WAS DUE TO

"POLITICAL RISK." THE SURETY'S BOND WOULD COVER 100 PERCENT OF ANY DRAWING BASED ON THE CONTRACTOR'S NON-PERFORMANCE, INCLUDING INSOLVENCY.

B. IF THERE SHOULD BE A QUESTION AS TO WHETHER A DRAWING OF THE LETTER OF CREDIT WAS BASED ON NON-PERFORMANCE OR WAS A "POLITICAL RISK" COVERED BY THE OPIC INSURANCE, THE RESOLUTION WOULD BE BASED ON THE DISPUTE-RESOLVING MECHANISM SPECIFIED IN THE UNDERLYING CONSTRUCTION CONTRACT OR IN THE LETTER OF CREDIT, IF THE LETTER CONTAINED SUCH A PROVISION.

C. IF, DUE TO DELAY IN THE DISPUTE-RESOLVING MECHANISM, OPIC HAD TO MAKE AN INTERIM "GOOD FAITH" DETERMINATION AS TO WHETHER A DRAWING WAS "POLITICAL" OR DUE TO THE CONTRACTOR'S NON-PERFORMANCE, OPIC WOULD MAKE SUCH DETERMINATION BASED ON ITS KNOWLEDGE AND UNDERSTANDING OF THE CIRCUMSTANCES AND WOULD NOT BECOME A PARTY TO, OR PARTICIPATE IN ANY WAY IN, THE ADJUDICATORY PROCEEDING REQUIRED BY THE CONTRACTUAL DISPUTE-RESOLVING MECHANISM. OPIC (AS TO 90 PERCENT) AND THE CONTRACTOR (AS TO 10 PERCENT) OR THE SURETY (AS TO 100 PERCENT) WOULD REIMBURSE THE BANK IN ACCORDANCE WITH OPIC'S DETERMINATION. OF COURSE, IF THE SUBSEQUENT DECISION UNDER THE DISPUTE-RESOLVING MECHANISM SHOULD BE INCONSISTENT WITH THAT DETERMINATION, OPIC, THE CONTRACTOR AND THE SURETY WOULD ADJUST MATTERS SO THAT THE ULTIMATE PAYMENT BURDEN WAS CONSISTENT WITH THE ADJUDICATORY DECISION.

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THE ABOVE DESCRIPTION OF CERTAIN DETAILS OF THE APPROVED ARRANGEMENT IS IN ACCORD WITH OUR UNDERSTANDING AND IS FULLY WITHIN THE AMBIT OF THE APPROVAL STATED IN THE ACTING COMPTROLLER'S LETTER OF SEPTEMBER 24. (END OF LETTER)  
KISSINGER

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## Message Attributes

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**Current Classification:** UNCLASSIFIED  
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**Status:** NATIVE  
**Subject:** EXEMPTION OF OPIC/SURETY PROPOSAL ATTN: OPIC VP HILLIARD ZOLA, FINANCIAL TIMES CONFERENCE AT BAHRAIN HILTON  
**TAGS:** EINV, SA, OPIC  
**To:** JIDDA  
**Type:** TE  
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